* **HIGH COURT OF DELHI : NEW DELHI**

\+ **ITA No. 165 of 2007**

% Judgment reserved on: 19th March, 2007

Judgment delivered on: 26th March, 2007

AHLUWALIA CONTRACTS(I) LTD.
1102, PRAKASH DEEP,
7, TOLSTOY MARG,
NEW DELHI ..... Appellant
Through:Mr.K.Sampath, Adv.

Vs.

JT.COMMISSIONER OF INCOME TAX
SPL. RANGE 10,
NEW DELHI. ..... Respondent
Through:Mr.Sanjeev Sabharwal,Adv.

Coram:

HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE V.B. GUPTA

1. Whether the Reporters of local papers may be allowed to see the judgment? No

2. To be referred to Reporter or not? No

3. Whether the judgment should be reported in the Digest? No

V.B. GUPTA, J.

Present appeal has been filed by the Appellant under Section 260-A of the Income Tax Act, 1961(for short as Act)

challenging the order of the Income Tax Appellate Tribunal (hereinafter referred to as Tribunal) dated 16th June, 2006 in ITA No.3134/Del/2001 for the assessment year 1991-92, dismissing the appeal of the Assessee against the levy of penalty of Rs.7,36,000/- for concealment of income under Section 271(1)(c) of the Act.

2. The brief facts of the case are that the Assessee-company is engaged in the business of construction. A search under Section 132 of the Act in the Assessee's premises was conducted on 12th March, 1994. During the search, several documents were seized. One such documents was a photostat copy of two pages of cash book. One page showed the cash receipts from Balbir Singh and other showed the receipt from Ramesh Sindhwani. The receipts from Balbir Singh were Rs.3,50,000/- in June, 1990, Rs.14 lacs also in June, 1990 and Rs.7 lacs on 3rd July, 1990. Thus, in all Rs.24,50,000/- were received in cash. In case of Ramesh Sindhwani, cash of Rs.1 lac each on 23rd June, 1990 and 22nd October, 1990 totalling to Rs.2 lacs was shown. These receipts, aggregating to Rs.16 lacs were, however, not included in the regular books of

accounts of the Assessee. In the assessment proceedings, the Assessee was confronted with the above position but he denied having received the cash amount. Balbir Singh gave statement on 22nd March, 1996 denying having made cash payment of Rs.14 lacs to the Assessee. He stated that he had entrusted the construction of a building to the Assessee and when he could not make payments as insisted by the Assessee, he had on a couple of occasions given bearer cheques as confirmation of his liability. These cheques were subsequently returned to him after he had issued account payee cheque to the Assessee. The alleged payment of Rs.14 lacs might be one such amount and he could produce evidence to substantiate it. It appears that the Assessee made a request to the Assessing Officer to summon Ramesh Sindhwani, but the said request was apparently not acceded to.

3. The Assessing Officer vide completing the assessment refused to give any credence to the statement of Balbir Singh on the ground that his statement that he gave bearer cheque of Rs.14 lacs which was returned to him by the Assessee on payment of the said amount through account

payee cheque was not substantiated by any evidence. The Assessing Officer, thus, held that the entire amount of Rs.16 lacs constituted the revenue receipts of the Assessee and accordingly brought the same to assessment.

4. The Assessee filed an appeal against the assessment order before the Commissioner of Income Tax(Appeals) but was not successful. Thereafter, the Assessee further appealed to the Tribunal vide ITA No.810/Del/97 and the Tribunal confirmed the addition and dismissed the appeal of the Assessee.

5 The Assessee challenged the order of the Tribunal in this Court, vide ITA No.50/1999.

6 Vide judgment dated 29th August, 2000 passed by this Court, the appeal of the Assessee was dismissed. It was held:-

> "So far as the reasons recorded for re-opening of the assessment are concerned the quoted portion goes to show that reasons did exist for entertaining a belief that income chargeable to tax had escaped assessment. Additionally the conclusions of the Tribunal on the question whether there was any receipt beyond the books are essentially factual and have been rendered after taking into account relevant aspects. That being the

position no question of law, much less a substantial question of law is involved."

7. In the meanwhile the Assessing Officer initiated penalty proceedings by issue of notice on 25th March, 1996 under Section 271 read with Section 271(1)(c) of the Act. The Assessee did not participate in the proceedings and requested the Assessing Officer to keep the penalty proceedings in abeyance till the disposal of its appeal before the High Court against the order of the Tribunal. The Assessing Officer refused to accept the Assessee's request. He held that the amount of Rs.16,00,000/- was added to the income of the Assessee since it was not recorded in the regular books of account. He observed that it is a well-established fact that in the business of real estate, taking money outside the books of account in cash is not uncommon. He further noted that in the Assessee's case there was evidence unearthed during the search to show that the aforesaid amounts constituted the income of the Assessee. He, therefore, held that the Assessee was guilty of concealment of income. He also invoked Explanation 5(a) below Section 271(1)(c). He, thus, levied a penalty of Rs.7,36,000/-.

8. On appeal, the Commissioner of Income Tax confirmed the levy of the penalty. Thereafter, the Assessee filed appeal before the Tribunal and vide impugned order, the appeal filed by the Assessee has been dismissed.

9. We have heard the learned counsel for the parties and gone through the record.

10. The Tribunal in its impugned order has quoted the observations made by the Tribunal in quantum appeal filed by the Assessee, i.e., ITA No.810/Del/97 and the relevant portion of the same reads as under:-

> "In factual and legal conspectus of the case, it is evident that the seized document bearing page no.4 as Annexure A-14 was found and seized from the appellant's premises. It is a photo copy of cash book which contain on left hand side the account of Shri Balbir Singh and on the right hand side the account is in the name of Shri Ramesh Sindhwani. The date wise entries have been made and against each date narration have been given. Mode of payment has been mentioned against each entry which is either by cheque or cash. The entries which are the subject matter of impugned additions are for Rs.14 lakhs by cash in the account of Shri Balbir Singh and Rs.2 lakhs in the account of Shri Ramesh Sindhwani. Two entries of Rs.50,000/- and Rs.3,00,000/- which are by cheque and have been made before and after the cash entry of Rs.14 lakhs have

been accepted by the assessee. The last entry in this account for Rs.7 lakhs by cheque has also been admittedly entered in the book of account maintained by the assessee. The totals of all the entries on the paper have also been striked at Rs.24,50,000/- by the assessee. It is thus cannot be said that the impugned amount of Rs.14 lakhs included in the addition of Rs.16 lakhs is not a part of the receipt from Shri Balbir Singh. The transaction of sale of flat with Mr.Sindhwani has also been accepted by the assessee. Both the entries of Rs.14 lakhs and Rs.2 lakhs in the account of Shri Balbir singh and Shri Ramesh Sindhwani made in cash have not been found recorded in the books maintained by the assessee. The AO has also given an adequate opportunity to the assessee to explain his case. He was also confronted with the seized document. The assessee has not been able to explain as to why the cash payments were not recorded in the books of accounts maintained by him. The statement of Shri Balbir singh is also not supported by any material. No debit entry has been found recorded for return of any cheques as claimed by Shri Balbir Singh in his statement recorded under Section 131 of the Act. Shri Balbir Singh has also specifically not denied the payment of Rs.14 lakhs made to the appellant. In his statement he replied that "the alleged payment of Rs.14 lakhs may be one of the such occasions". The occasion in his statement is stated to be making of payment through bearer cheque in case of financial crisis and difficulties for due payment. No supporting evidence or material has been brought on record to support this claim. In the absence of any

> supportive material, the only presumption that can be drawn is that unaccounted receipt in the hands of the assessee is nothing but an unaccounted payment by Shri Balbir Singh. It is thus natural that Balbir Singh is not likely to admit such an unaccounted payment straightly. Despite having given proper opportunity to the assessee, no material has been brought on record by the appellant to show that the cash entries recorded in the account of Shri Balbir Singh and Shri Sindhwani do not establish a direct nexus with the receipts made by the appellant or that these could not be treated as income of the assessee from undisclosed sources. The CIT(A) has also dealt with the issue in detail at para 6 of his order. Keeping in view all these facts into consideration, we do not find any ground to interfere with the decision taken by the CIT(A) and accordingly uphold his decision in confirming the addition of Rs.16 lakhs made by the A.O. In the result, the ground raised by the assessee is dismissed."

11. Since the quantum appeal filed by the Assessee has been dismissed by this very Court, the Income Tax Authorities were right in holding that the Assessee concealed its income to the extent of Rs.16 lacs and as such penalty of Rs.7,36,000/- has been rightly levied on the Assessee for concealment of income under Section 271(1)(c) of the Act and there are concurrent findings of facts to this effect by these statutory authorities.

12. The above being the position, no fault can be found with the view taken by the Tribunal. Thus, the order of the Tribunal does not give rise to a question of law, much less a substantial question of law, to fall within the limited purview of Section 260-A of the Act, which is confined to entertaining only such appeals against the order which involves a substantial question of law.

13. Accordingly, the present appeal filed by the Assessee is, hereby, dismissed.

(V. B. GUPTA)
JUDGE

March 26, 2007 **(MADAN B. LOKUR)**
bisht **JUDGE**